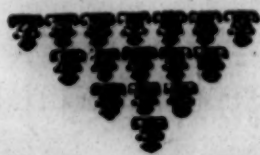


THE
NAMES
Of the RIGHT HONOURABLE
PEERS,
Who protested against Some
PROCEEDINGS
In the CASE of
Dr. *HENRY SACHEVERELL*.
Together with Their LORDSHIPS
REASONS
For such Their
PROTESTATION.



Printed in the Year 1710.

THE
IN A M E S

OF THE RIGHT HONORABLE

P E R S

Who presided at the Court

PROCEEDINGS

IN THE CASE OF

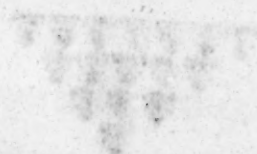
DR. HENRY SACHSENBURG

By Counsel with Their Lordships

R E A S O N S

For such Their

PROTESTATION



Printed in the Year 1710.

Die Martis, 14^o Martij, 1709.

The **QUESTION** was put,

That by the Law and Usage of Parliament, in Prosecutions, by Impeachments, for High Crimes and Misdemeanours, by Writing or Speaking, the Particular Words, supposed to be Criminal, are not necessarily to be expressly specified in such Impeachments?

It was resolved in the Affirmative.

DISSENTIENT,



BECAUSE We conceive, the Law of the L

Land is as much the Rule of Judicature in BUCKINGHAM,
Parliament, as it is in the Inferiour Courts J. O. EBOR.
of Justice; and since, by the Opinion of all H. LONDON,
the Judges, in all Prosecutions by Informa- HAMILTON,
tion or Indictment, for Writing or Speaking, BERKELEY of
Stratton,

the particular Words, suppos'd to be Criminal, must be ex- NORTHESK,
pressly specified in such Information or Indictment; and that DARTMOUTH,
this is the Law of the Land, confirm'd by constant Practice; THO. ROFFEN.
we conceive, that there is the same Reason and Justice for spe- GEO. BATH and
cifying, in Impeachments, the particular Words supposed to WELLS;
be Criminal; for, otherwise, a Person who is Innocent and Safe MAR,
by the Law out of Parliament, may, nevertheless, be con- HAVERSHAM.

For, We conceive, that some Reasons of Law and Justice, why the Words supposed Criminal must be specified in Informations and Indictments, may be, that the Party accused may certainly know his Charge, and be thereby enabled to defend his Innocence; that the Jury may know it too, and be enabled thereby the better to apply the Evidence given by the Witnesses to the Matter of such Charge; and that the Judges

themselves may the better judge of the Nature of the Crime, and of a Punishment adequate to it; which, in Cases of Misdemeanour, which are indefinite and innumerable, must extremely vary, according to the Heinousness of the Offence: And, finally, that the House of Lords, upon Complaint to them, may also judge, whether the Fine, which is usually one of the Punishments for Misdemeanours, does not exceed the Demerit; especially, since by the Bill of Rights, Exorbitant Fines are declared to be Illegal: Which Reasons seem to be fully as strong in the Case of Impeachments, as in Indictments and Informations; for, the particular Words are as necessary to enable the Lords to determine uprightly and impartially, as the Jury or Judges; and as necessary for the Defence of the Accused here, as in the Courts below; and, if there was to be a Difference, it seems more necessary in this High Court; for, the weightier the Prosecution is, the more Need has an unfortunate Man of Indulgence, and all lawful Favour: And, surely, there cannot be a heavier Load upon any Man, than an Accusation of all the Commons of *Great-Britain*.

II. We do not remember any Precedent insisted on for the Maintenance of this Resolution, save only the Case of *Dr. Manwaring*, which, we conceive, could not warrant this Resolution. For, 1. The Words charg'd upon him, by the Commons Declaration, were not compar'd with the Sermons, tho' it was desired; and, consequently, no Lord could say, they were not the Words of the Sermon: And, therefore, upon such Uncertainty, we conceive, we could not ground a positive Resolution. 2. The Charge upon him, taken out of his Sermon on the 4th of *May*, 1628, seems to be the very Words by him spoke; for they were attested by Ear-Witnesses, who, surely, never were or could be admitted to attest their own Conjectures of the Scope of a Sermon, and not specify the very Words; for that would be, to make the Witnesses to be the Judges. 3. Besides, in such a Case as this, where the Party did not insist on any legal and just Exceptions, of which he might have taken Advantage, if he had made his Defence; which he did not, but submitted, and beg'd Pardon; This ought not to be look'd upon as a Precedent, or Authority, to justify the Illegality of the Form of that Impeachment.

But

But altho' this Precedent was full and exprefs to the Point III. resolv'd, we humbly conceive, that one Precedent is not fufficient to fupport a Law and Custom of Parliament; nor, confequently, a Refolution declaring it; for, furely, there is a great Difference between a fingle Inftance, and a Law and Custom: Efppecially,

Since we conceive, that in all the Precedents, at leaft, all IV. that have appear'd to us for Four hundred Years, of the Profeutions in Parliament, the particular Words charg'd, as Criminal, have been constantly exprefs'd in the Articles or Declarations of Impeachment.

Exilium Hugonis le Despencer Patris & Filij: The firft Article Ed. II. was for making a Bill in Writing; the Tenour whereof was particularly fet forth.

William de la Pool, Sixth Article was for Words fpoken by 26 H. VIII. him, fitting in Council in the *Star-Chamber*, viz. that he faid, *He had a Place in the Council-Houfe of the French King as he had here, and was as well trusted as he was here; and could remove from the French King the Privyest Man of his Council, if he would.*

Lord Finch.	1640.
The Opinions he deliver'd, are fet forth in <i>hæc verba</i> .	ART. 4.
As alfo the Times when he deliver'd them.	5.
Another Opinion deliver'd by him, in the <i>Exchequer-Chamber</i>	7.
and <i>Western-Circuit</i> , is fet down in his Exprefs Words.	

Dr. Cozens.	1640.
He is charg'd with Words, deliver'd in a Sermon at <i>Dur-</i>	ART. II.
<i>ham.</i>	
The Words were thefe; <i>The Reformers, &c.</i>	
Charges him with Words in like manner: The Words were	19.
thefe; <i>The King, &c.</i>	

Berkley.	1641.
The Words charg'd upon, are exprefsly mention'd.	ART. I.
That he fubfcrib'd an Opinion in <i>hæc verba</i> .	4.
Which are fpecified.	5.

The

6. The Matter therein charg'd, tho' of Record, was copied, and deliver'd with the Articles.

7, 8. The Words spoken, and the Place, expressly set forth.

1641.

Judge *Crawley*.

ART. 1, 2, 3.

For subscribing, and giving Opinions, set forth in *hæc verba*.

1641.

Herbert.

For exhibiting Articles against the Five Members; which Articles follow in these Words, &c.

1641.

Thirteen Bishops impeach'd for making and promulging, in 1640, several Constitutions and Canons, contrary to the King's Prerogative, &c.

They demurr'd, because the Charge was General; but receded from this Demur, because it appear'd to be Particular.

1641.

E. Strafford.

ART. 2.

Expresses the Words spoken by him, and the Time.

4, 20, 21, 22, 23, 24,

Express the Words spoken by him.

25, 27.

26.

Is, in like manner, with an Innuendo of his Meaning.

1642.

Archbishop *Laud*.

ART. 1, 4, 10.

Express the Words spoken by him.

2.

Expresses the Words spoken by him, and the Time, and Place.

So necessary did the Long Parliament itself think it, to pursue the Forms of Law in all their Prosecutions.

Upon the Whole, therefore, we conceive, that so great a Number of Precedents is sufficient to outweigh the single Instance of Dr. *Manwaring's* Case, how apposite soever it may seem to be to the present Case; which, for the Reasons we have mention'd, is far from being Plain and Clear, or having the full Authority of a Precedent: And the Law and Custom of Parliament, as we conceive, is to be determin'd by constant Course and Practice, and not one Precedent occasion'd by such odious Doctrines as those of Dr. *Manwaring*. Nor can the contrary Assertion, to the abovesaid Resolution, be of any ill Consequence to Impeachments by the Commons, because it is easie for them to specify the Words which offend them, but extremely difficult for the Accus'd to defend himself, without knowing them. And as all, who are charg'd Criminally, have leave

leave to make their Defence, so they should also have allow'd to them all lawful Means for it.

Jo. Ebor.	Leeds,	Thanet,	Beaufort,
Scarsdale,	Suffex,	Denbigh,	Yarmouth,
Anglesey,	Nottingham,	Plymouth,	Berkshire,
Abingdon,	N. Duresme,	Northampton,	Jersey,
Weymouth,	Rochester,	North and Grey,	Stawell,
Conway,	Scarborough,	Craven,	Howard.
Willughby, Br.	W. Cestriens.	R. Ferrers,	
Guilford,	Osborne,		
H. London,	Guernsey,		
	Lempster,		

Die Jovis, 16^o Martij, 1709.

THE Order of the 14th instant being read, for taking into Consideration the Impeachment of Dr. *Henry Sacheverell*, Article by Article:

And it being mov'd to declare, *That the Commons had made good the First Article against Dr. Henry Sacheverell*;

After a long DEBATE thereupon,

This QUESTION was proposed,

That the Commons have made good Their First Article of Impeachment against Henry Sacheverell, Doctor in Divinity?

And a farther DEBATE thereupon,

This QUESTION was put,

Whether this QUESTION shall be now put?

It was resolved in the Affirmative.

DISSENTIENT,

Because We humbly conceive, there are no Reflections therein contain'd on the Memory of the late King *William*, nor the *Revolution*: And that there is no Offence charg'd therein upon Dr. *Sacheverell*, against any known Law of the Land.

<i>Jo. Ebor.</i>	<i>Ormonde,</i>	<i>Hamilton,</i>
<i>Wemyss,</i>	<i>Anglesey,</i>	<i>Berkshire,</i>
<i>Suffolk,</i>	<i>Rochester,</i>	<i>Thanet,</i>
<i>Shrewsbury,</i>	<i>Buckingham,</i>	<i>Scarborough,</i>
<i>Poulet,</i>	<i>Craven,</i>	<i>Nottingham,</i>
<i>Beaufort,</i>	<i>Weymouth,</i>	<i>North and Grey,</i>
<i>Denbigh,</i>	<i>Sussex,</i>	<i>Conway,</i>
<i>Stawell,</i>	<i>Lexington,</i>	<i>Lempster,</i>
<i>Yarmouth,</i>	<i>Osborne,</i>	<i>Abingdon,</i>
<i>R. Ferrers,</i>	<i>Northesk,</i>	<i>Geo. Bath and</i>
<i>N. Duresme,</i>	<i>Tho. Roffen.</i>	<i>Wells,</i>
<i>Scarsdale,</i>	<i>Northampton,</i>	<i>Plymouth,</i>
<i>Howard,</i>	<i>Mar,</i>	<i>Guilford,</i>
<i>Berkely, Str.</i>	<i>Leigh,</i>	<i>H. London,</i>
<i>Say and Sele,</i>	<i>Weston,</i>	<i>Dartmouth,</i>
<i>W. Cestriens.</i>	<i>Chandos,</i>	<i>Haversham,</i>
<i>Willughby, Br.</i>	<i>Guernsey,</i>	<i>Leeds.</i>

Then the main QUESTION being put,

That the Commons have made good Their First Article of Impeachment against Henry Sacheverell, Doctor in Divinity?

It was resolved in the Affirmative.

DISSENTIENT,

Because, by the Laws of the Land, the Laws of Parliaments, and the Inherent Right of Peerage, every Peer is to judge for Himself, both of the Fact, as well as of the Law, and can't be precluded by any Majority; which, indeed, must determine the Case in respect of the Criminal; but never did, nor can, preclude any Lord from Voting the Party Accus'd,

BUCKINGHAM,
SHREWSBURY,
DARTMOUTH,
GUILFORD,
N. DURESME,
WILLUGHBY, Br.
HAVERSHAM,
NORTHESK,
MAR.

Accus'd, Guilty or Not Guilty of the Fact, as well as the Crime of such a Fact.

<i>Sussex,</i>	<i>Thanet,</i>	<i>Leeds,</i>
<i>Northampton,</i>	<i>Denbigh,</i>	<i>Beaufort,</i>
<i>Yarmouth,</i>	<i>Weymouth,</i>	<i>Scarsdale,</i>
<i>Scarborough,</i>	<i>Stawell,</i>	<i>Rochester,</i>
<i>W. Cestriens.</i>	<i>Conway,</i>	<i>Jersey,</i>
<i>North and Grey,</i>	<i>Howard,</i>	<i>R. Ferrers,</i>
	<i>Geo. Bath and</i>	<i>Plymouth,</i>
	<i>Wells,</i>	<i>Leigh,</i>
	<i>Guernsey,</i>	<i>Abingdon,</i>
	<i>Craven,</i>	<i>Ashburnham.</i>

To the QUESTIONS upon the Second, Third, and Fourth Articles, We dissent, for the same Reason as is given against the QUESTION upon the First.

<i>Buckingham,</i>	<i>Hamilton,</i>	<i>Beaufort,</i>
<i>Berkshire,</i>	<i>Sussex,</i>	<i>Denbigh,</i>
<i>Nottingham,</i>	<i>Scarsdale,</i>	<i>Yarmouth,</i>
<i>Rochester,</i>	<i>Stawell,</i>	<i>Jersey,</i>
<i>Weymouth,</i>	<i>Poulet,</i>	<i>Thanet,</i>
<i>Howard,</i>	<i>Abingdon,</i>	<i>Plymouth,</i>
<i>H. London,</i>	<i>Conway,</i>	<i>Northampton,</i>
<i>Ormonde,</i>	<i>Weston,</i>	<i>Anglesey,</i>
<i>Willughby, Br.</i>	<i>Guilford,</i>	<i>Craven,</i>
<i>Guernsey,</i>	<i>Lexington,</i>	<i>Dartmouth,</i>
<i>Jo. Ebor.</i>	<i>W. Cestriens.</i>	<i>Tho. Roffen.</i>
<i>N. Duresme,</i>	<i>Geo. Bath and</i>	
	<i>Wells,</i>	

Die Sabbati, 18^o Martij, 1709.

IT is Ordered, by the Lords Spiritual and Temporal in Parliament assembled, That the QUESTION to be put to each Lord in *Westminster-Hall*, shall be,

Is Henry Sacheverell, Doctor in Divinity, Guilty of High Crimes and Misdemeanours, charg'd on Him by the Impeachment of the House of Commons? And the Answer thereunto, shall be, Guilty, or Not Guilty, only.

DISSENTIENT,

BUCKINGHAM,
HAMILTON,
MAR,
LEXINGTON,
DARTMOUTH,
NORTHESK,
JO. EBOR.
W. CESTRIENS.
THO. ROFFEN.
N. DUKESME,
SHREWSBURY.

- I. Because We do humbly conceive, that the obliging every Lord to Answer generally, Guilty or Not Guilty, to a Question containing all the Articles of this Impeachment, is a Kind of Tacking upon ourselves, by an unnecessary Joining the Matters of a different Nature, and Subjecting them to one and the same Determination; and, consequently, may prejudice the Right every Peer has to give a free Affirmative or Negative; since, whoever thinks Dr. *Sacheverell* Guilty of One Part, and Innocent of the Other, will be obliged either to Approve what he Condemns, or Condemn what he Approves.
- II. We do humbly conceive, there is, at least, a Possibility, that tho' a Majority of the House, if admitted to Vote to the Articles separately, may think him Innocent upon each Article; yet, by this Method of a general Answer, he may be Condemn'd of all: Which seems not to be consistent with the usual Method of Justice in this House.
- III. We humbly conceive, that since the Judgment of the House, in this Case, ought to be a Declaration of the Law; the Condition of the People will be most miserable, to have Punishment inflicted for High Crimes and Misdemeanours, and not to have a Possibility of informing themselves, what the High Crimes and Misdemeanours, thereby punish'd, are: For, the People's only Guide is the Law; and they can never be guided by what they can never be inform'd of. And We do humbly conceive, that this Uncertainty being in the Case of a Clergyman for Preaching, it may, possibly, create some Fear

in good Men, when they Preach some Doctrines of the Church of England; particularly, that of *Non-Resistance*; and may be made use of by ill Ones, as an Excuse for the Neglect of that Duty, which, upon some Occasions, is required of them, even by the Laws of the Land.

Ormonde,	Beaufort,	Berkshire,
Scarsdale,	Anglesey,	Thanet,
Denbigh,	Northampton,	Yarmouth,
Leeds,	Lempster,	Rochester,
Nottingham,	H. London,	Sussex,
Stawell,	R. Ferrers,	North and Grey,
Weymouth,	Poulet,	Abingdon,
Craven,	Howard,	Jersey,
Osborne,	Plymouth,	Conway,
Willughby, Br.	Guilford,	Weston,
Haverham,	Leigh,	Guernsey.
	Geo. Bath and Wells,	

Die Lunæ, 20^o Martij, 1709.

THE House, pursuant to the Order of Saturday last, Adjourn'd into *Westminster-Hall*.

And, being there, the House was resum'd: And the Lord Chancellor declar'd, That the Lords had agreed upon a **QUESTION** to be put to each Lord, generally.

Then his Lordship put the **QUESTION**, beginning at the *Junior* Baron first, as follows:

Is Dr. Henry Sacheverell Guilty of High Crimes and Misdemeanours, charg'd upon him by the Impeachment of the House of Commons?

And

Fourthly,

And having asked every Lord present, and they having declared Guilty, or Not Guilty, his Lordship having cast up the Votes, declared him Guilty.

DISSENTIENT,

Sussex,	Leeds,	Buckingham,
Thanet,	Yarmouth,	Rochester,
Nottingham,	Jo. Ebor.	Mar,
Craven,	Lempster,	Weymouth,
Northesk,	Northampton,	Guilford,
North and Grey,	Willughby, Br.	Conway,
Leigh,	Abingdon,	Anglesey,
Jersey,	Poulet,	Scarsdale,
Hamilton,	H. London,	Dartmouth,
Beaufort,	Guernsey,	Denbigh,
Weston,	Geo. Bath and	Howard,
Ormonde,	Wells,	Tho. Roffen.
Berkshire,	Say and Sele,	Berkely, Str.
N. Duresm.	Osborne,	Stawell,
Shrewsbury,	Plymouth,	Lexington.
Scarborough,	Chandos,	
	W. Cestriensf.	

Die Martis, 21^o Martij, 1709.

Then the House (pursuant to the Order Yesterday) took into Consideration what Censure to give upon Henry Sacheverell, Doctor in Divinity.

And it being propos'd as follows:

First, That Dr. Henry Sacheverell be enjoin'd not to preach during the Term of Seven Years.

Secondly, That for the same Term of Years, he be made incapable of receiving any other Ecclesiastical Benefice, than what he now enjoys.

Thirdly, That he be imprison'd in the Tower, for Three Months, and until he find Sureties for his good Behaviour during the Term of Seven Years, before the Two Chief Justices.

Fourthly,

[11]
Fourthly, That his Sermons be burnt by the Hangman, at the *Exchange*, in the Presence of the Lord-Mayor, and Sheriffs.

Then the House took the propos'd Question into Consideration, Paragraph by Paragraph ; and, after Debate upon the first Paragraph,

It was agreed to leave out the Word (Seven) ; and it being propos'd, instead thereof, to insert the Word (Three)?

The Question was put,

Whether the Blank in the first Paragraph shall be fill'd up with the Word (Three)?

It was Resolv'd in the Affirmative.

Then the Question was put,

That Dr. *Henry Sacheverell* shall be enjoin'd not to preach during the Term of Three Years?

It was Resolv'd in the Affirmative.

Then the second Paragraph propos'd, was,

That Dr. *Henry Sacheverell* be made incapable of receiving any Ecclesiastical Benefice, for the Space of Three Years.

And after Debate thereupon,

This Question was put,

That Dr. *Henry Sacheverell* be made incapable of receiving any farther Ecclesiastical Benefice, during the said Term of Three Years?

It was Resolv'd in the Negative.

Then the third Paragraph propos'd, was,

That Dr. *Henry Sacheverell* shall be imprison'd in the *Tower* for three Months, and until he find Sureties for his good Behaviour.

This was not insisted on.

Then the fourth Paragraph propos'd, was,

That Dr. *Sacheverell's* Two Sermons be burnt by the Hangman at the *Exchange*, in the Presence of the Lord Mayor, and Sheriffs.

And

And after farther Debate, this Question was put,
 That the Two printed Sermons of Dr. Henry Sacheverell,
 referr'd to by the Impeachment of the House of Commons,
 shall be burnt before the *Royal-Exchange*, by the Hands of the
 Common Hangman, in the Presence of the Lord Mayor of
 London, and the two Sheriffs of London and Middlesex?

It was Resolv'd in the Affirmative.

It is Ordered by the Lords Spiritual and Temporal in Par-
 liament assembled, That the Judgment to be pass'd in the Case
 of Dr. Henry Sacheverell, shall be,

That Henry Sacheverell, Doctor in Divinity, shall be, and is
 hereby enjoyned not to preach during the Term of Three
 Years next Ensuing:

That Dr. Henry Sacheverell's Two printed Sermons, referr'd
 to by the Impeachment of the House of Commons, shall be
 burnt before the *Royal-Exchange* in London, between the Hours
 of Twelve and One, on Monday the 27th day of this Instant
March, by the Hands of the Common Hangman, in the Pre-
 sence of the Lord Mayor of the City of London, and the two
 Sheriffs of London and Middlesex.

DISSENTIENT,

Jo. Ebor.	Buckingham,	Denbigh,
Scarsdale,	Berkshire,	Nottingham,
Northampton,	Abingdon,	Thanet,
Craven,	Conway,	Osborne,
Howard,	Plymouth,	Beaufort,
North and Grey,	H. London,	Anglesey,
Scarborough,	Yarmouth,	Sussex,
N. Duresme,	Tho. Roffen.	R. Ferrers,
Weymouth,	Guernsey,	Leigh,
Geo. Bath and	Lempster,	Poulet.
Wells,	Ashburnham,	
Guilford,		

E I N I S

